

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

**BERNARD STEVENS-BEY and
DAVID L. WELLS,**

Plaintiffs,

Case No. 06-10508

v.

HONORABLE DENISE PAGE HOOD

**PATRICIA CARUSO and
HUGH WOLFENBARGER,
in their individual capacities,**

Defendants.

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ORDER ACCEPTING REPORT AND RECOMMENDATION

This matter is before the Court on Magistrate Judge Steven D. Pepe's Report and Recommendation dated February 23, 2007. No Objections to the Report and Recommendation were filed.

Plaintiffs Bernard Stevens-Bey and David L. Wells are in the custody of the Michigan Department of Corrections. On February 7, 2006, they filed the instant action, pursuant to 42 U.S.C. § 1983, alleging that Defendants violated their Eighth Amendment right to be free from cruel and unusual punishment, as they have been subjected to a smoke-filled environment. On September 13, 2006, Defendants filed a Motion for Summary Judgment. On November 6, 2006, Plaintiffs filed a Response to Defendants' Motion for Summary Judgment. On November 15, 2006, Plaintiffs filed a Motion to Defer Summary Judgment Pursuant to Rule 56(f). Specifically, Plaintiff Wells requests additional time to obtain the following: a spirometric test to confirm a diagnosis of COPD, a test to

detect the presence of cotinine in his urine, and the assistance of a lung disease specialist to review his medical file. (Pls.' Mot. to Defer Summ. J. 2). Plaintiff Wells also attached an affidavit wherein he states that he has unsuccessfully attempted to secure counsel and is litigating this action with the assistance of other inmates. *Id.*, Att. D.

In response, Defendants state they have no objection to the deferral of the decision on the Motion for Summary Judgment, as they also need additional time to obtain Plaintiff Wells' complete medical records. (Defs.' Resp. to Pls.' Mot. to Defer Decision on Defs.' Mot. for Summ. J. at 2).

The Magistrate Judge correctly found that, because the parties concur on their need for additional time for discovery, it would be inappropriate to render a decision on Defendants' Motion for Summary Judgment at this time.

Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation of Magistrate Judge **[Docket No. 30, filed February 23, 2007]** is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment **[Docket No. 15, filed September 13, 2006]** is DENIED without prejudice.

IT IS ORDERED that Plaintiffs' Motion to Defer Summary Judgment **[Docket No. 21, filed November 15, 2006]** is DENIED AS MOOT.

IT IS FURTHER ORDERED that this matter is referred to the Magistrate Judge for all pretrial proceedings.

s/ DENISE PAGE HOOD
DENISE PAGE HOOD
United States District Judge

DATED: August 17, 2007

I hereby certify that a copy of the foregoing document was electronically served upon counsel of record and served upon the plaintiffs by ordinary mail on August 17, 2007, at the following address(es):

David Wells, Reg. No. 125291
Macomb Regional Facility
34625 26 Mile Rd.
New Haven, Michigan 48048

Bernard Stevens, Reg. No. 166360
Saginaw Correctional Facility
9625 Pierce Rd.
Freeland, MI 48623

S/William F. Lewis
Case Manager